



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201424024**
Release Date: 6/13/2014

Date: March 20, 2014

UIL: 501.00-00; 501.03-00; 501.03-08
501.32-00; 501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. We acknowledge your letter dated March 14, 2014 withdrawing your protest in accordance with Rev. Proc. 2014-09, I.R.B. 2014-2 Section 7.08. Accordingly, pursuant to Rev. Proc. 2014-09, I.R.B. 2014-2 Section 7.04, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Tamera Ripperda
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: February 12, 2014

Contact Person:

Uniform Issue List:

Identification Number:

501.00-00

Contact Number:

501.03-00

501.03-08

FAX Number:

501.32-00

501.33-00

Employer Identification Number:

Legend:

State =
Founder 1 =
Founder 2 =
Affiliates =
Company 1 =
Continent =
Amount 1 =
Company 2 =
Organization 1 =
Amount 4 =
Amount 5 =

Dear :

We have considered your application and supporting documents for recognition of exemption from Federal income tax under Internal Revenue Code (I.R.C.) § 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under I.R.C. § 501(c)(3). The basis for our conclusion is set forth below.

Facts

You were formed as a charitable corporation under the laws of State. Your Articles of Incorporation state that you are organized exclusively for charitable and educational purposes within the meaning of § 501(c)(3). Specifically, you are organized to "alleviate poverty in the developing world by empowering communities to improve the lives of their members through the implementation of programs which yield economic, social, and environmental change."

You were formed by Founder 1 and Founder 2 to raise funds in order to invest in Affiliates and Company 1, a for-profit manufacturer and seller of fuel-efficient stoves in Continent that was also founded by Founder 1 and Founder 2. You stated that you formed to finance the operations and for-profit activities of Company 1 and Affiliates while also receiving a charitable

deduction by donating to you as opposed to directly investing in Company 1. Additionally, you stated that you sought exemption to receive a possible grant of Amount 1 from Founder 1. Company 1 will pay for all of your operating costs for the foreseeable future.

Your primary activity is making investments in Company 1 and Company 1's wholly-owned, for-profit Affiliates to facilitate the purchase of fuel-efficient stoves for resale in Continent. Company 1 manufactures and sells fuel-efficient stoves at cost or slightly below cost to Affiliates in Continent. The for-profit Affiliates then sell the stoves and other similar goods at below cost to local "charter organizations," which are franchisees of Company 1. The charter organizations then sell the stoves at cost plus to end users, who are individuals living in Continent, or to wholesale customers, such as cooperative organizations, associations, and retailers, who then sell or donate the stoves to the end users. You state that you will not provide stoves to end users because you believe that people value things more if they pay for things themselves.

In addition, you engage for-profit entity, Company 2, to train individuals to sell Company 1's products in Continent. Further, you will make contributions to a nonprofit organization, Organization 1, to develop training materials for the individuals. You will pay Organization 1 for "recruiting and training women as a door to door sales force" to sell Company 1's products. While Organization 1 will provide a "detailed training on sales and financial management to empower women to start a business selling Company 1 products (initially the stoves)," participants are not obligated to sell the stoves. You will not develop training materials yourself or conduct trainings of individuals yourself.

Founder 1 and Founder 2 are members of both your Board of Directors and the governing body of Company 1. Founder 1 and Founder 2 are also the managing members of Company 1 and its Affiliates, as well as co-founders and officers of Company 1. Founder 1 has an Amount 4 ownership interest in Company 1 and an ownership interest in one of Company 1's Affiliates. Founder 2 has an Amount 5 interest in Company 1.

Law

I.R.C. § 501(a) exempts from Federal income taxation organizations described in § 501(c).

I.R.C. § 501(c)(3) describes organizations that are organized and operated exclusively for religious, charitable, educational purposes, and other exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(3)-1(a)(1) states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. § 1.501(c)(3)-1(c)(1) states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in I.R.C. § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. § 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly, by such private interests.

Treas. Reg. § 1.501(c)(3)-1(d)(2) defines the term "charitable" as including the promotion of social welfare by organizations designed to relieve the poor and distressed or the underprivileged, to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

Treas. Reg. § 1.501(c)(3)-1(d)(3) provides that the term "educational" relates to the instruction or training of the individual for the purpose of improving or developing his capabilities, or the instruction of the public on subject useful to the individual and beneficial to the community. The regulation also provides four examples of educational organizations.

Treas. Reg. § 1.501(c)(3)-1(e)(1) provides that an organization may meet the requirements of IRC 501(c)(3) even though it operates a trade or business as a substantial part of its activities, unless its primary purpose is carrying on of a trade or business that does not further charitable purposes.

Rev. Rul. 67-149, 1967-1 C.B. 133, concerns an organization formed for the purpose of providing financial assistance to several different types of organizations which are exempt under § 501(c)(3). It carries on no operations other than to receive contributions and incidental investment income and to make distributions of income to such exempt organizations at periodic intervals. The ruling holds that the organization is exempt under § 501(c)(3).

Rev. Rul. 68-489, 1968-2 C.B. 210, holds that an organization will not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds for section 501(c)(3) purposes. In this ruling, an organization exempt from Federal income tax under section 501(c)(3) distributed part of its funds to organizations not themselves exempt under section 501(c)(3). The exempt organization ensures use of the funds for section 501(c)(3) purposes by limiting distributions to specific projects that are in furtherance of its own exempt purposes. It retains control and discretion as to the use of the funds and maintains records establishing that the funds were used for section 501(c)(3) purposes.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that a trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university, and therefore, the association did not qualify for exemption.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the organization operated for the benefit of private interests, a nonexempt purpose. Because more than an insubstantial part of the organization's activities furthered this nonexempt purpose, the organization failed to establish that it operated exclusively for exempt purposes within the meaning of § 501(c)(3). When an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private interests, the organization by definition does not operate exclusively for exempt purposes.

Rationale

Based on the facts presented in your application and supporting documents, we conclude that you are not operated for exempt purposes. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code.

Your application and supporting documentation must demonstrate that your organization meets the operational test under section 1.501(c)(3)-1(a)(1) of the Regulations. Exempt organizations must operate exclusively for exempt purposes. I.R.C. § 501(c)(3). The term exclusively has been interpreted to mean primarily. Treas. Reg. § 1.501(c)(3)-1(c)(1). A single substantial non-exempt purpose is sufficient to prevent exemption. Better Business Bureau v. U.S., 326 U.S. at 283. If an organization fails the operational test, it cannot qualify as an exempt organization under section 501(c)(3) of the Code.

You were established to fund the operations of a for-profit company engaged in the manufacture and sale of fuel efficient stoves and other products to its affiliates, who sell to persons in Continent at or below cost. Further, part of your net earnings inures to the benefit of private individuals and your operations serve private interests. These are substantial non-exempt purposes, and as such, you do not qualify for exemption.

Your activity of investing in a for-profit company that sells products to its for-profit affiliates is not charitable within the meaning of the Code and Regulations. Treas. Reg. § 1.501(c)(3)-1(d)(2). You have not shown how facilitating the sale of products to persons in Continent alleviates poverty or serves any other charitable purpose within the meaning of § 501(c)(3). In fact, you specifically say that you reject the common understanding of charity because people do not appreciate things given to them and rather seek to establish a workforce to sell Company 1 and Affiliates' goods. Further, you do not turn over substantially all of your income to organizations described in § 501(c)(3), like the organization described in Rev. Rul. 67-149. You also do not provide funds to non-exempt organizations in a manner similar to Rev. Rul. 68-489, whereby the organization disbursed some of its income to non-exempt entities but restricted the use to purposes described in § 501(c)(3).

Your activity of funding training for individuals to learn to sell Company 1's products is not charitable or educational within the meaning of the Code and Regulations. Treas. Reg. § 1.501(c)(3)-1(d)(2) and Treas. Reg. § 1.501(c)(3)-1(d)(3). You will fund training for individuals to become entrepreneurs and sell primarily Company 1's products in Continent. The programs carried on by Organization 1 and Company 2 serve the substantial non-exempt purpose of promoting Company 1's goods to increase output in Continent. These activities do not serve primarily educational purposes within the meaning of Treas. Reg. § 1.501(c)(3)-1(d)(3). Even if

these activities qualified as exempt activity, they are insubstantial when compared to your substantial nonexempt activity of investing in for-profit companies. Since your investment activity represent more than an insubstantial amount of your overall activities and this activity is neither charitable nor educational, you do not operate exclusively for exempt purposes. See Better Business Bureau, 326 U.S. at 283.

The primary purpose for your formation was to secure grants to invest in Company 1, which is a for-profit company started by Founder 1 and Founder 2. Your investments in Company 1 will increase the overall grants going to Company 1, which would substantially benefit Company 1 and thereby Company 1's members, officers, and directors, including Founder 1 and Founder 2. Additionally, as Founder 1 and Founder 2 are minority owners of Company 1 and Affiliates, any private benefit received by Company 1 will in turn inure to the benefit of Founder 1 and Founder 2. Since Founder 1 and Founder 2 are your founders and serve as your officers and directors, this benefit constitutes inurement that is strictly prohibited under § 501(c)(3).

As you operate for the benefit of private interests, you by definition do not operate exclusively for exempt purposes. See American Campaign Academy v. Commissioner, at 1065-1066. Because you provide a substantial private benefit to private individuals and for-profit companies that is not incidental to furthering any exempt purpose, you have a substantial nonexempt purpose which destroys the exemption regardless of the number or importance of truly exempt purposes. See Better Business Bureau v. U.S., 326 U.S. at 283.

Conclusion

Based on the information provided, we are not able to conclude that you are operated exclusively for exempt purposes. Despite any charitable purposes your activities may achieve, you cannot qualify for tax exemption because more than an insubstantial part of your activities are not in furtherance of exempt purposes.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service (IRS) may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the IRS will consider the failure to protest as a failure to exhaust available administrative remedies. Section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of

Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
TEGE
1111 Constitution Ave., N.W.
Washington, D.C. 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Kenneth C. Corbin
Acting Director, Exempt Organizations